

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

DAVID CHERRY, Personal
Representative of the ESTATE
OF PAMELA CHERRY, DECEASED,

Plaintiff,

vs.

MACON COUNTY HOSPITAL, INC.
d/b/a MACON COUNTY GENERAL
HOSPITAL and HANNA C. ILIA,
M.D.,

Defendants.

Case No.
2:12-cv-00043

The videotaped deposition of

RICHARD M. SOBEL, M.D.

September 25 and 30, 2013

VOLUME OF I of III

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The videotaped deposition of RICHARD M. SOBEL,

M.D., taken pursuant to notice for all purposes, at the Wingate Inn, 7882 Senoia Road, Fairburn, Georgia, September 25, 2013, at 9:51 a.m., at the instance of the Defendants, pursuant to the Federal Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. Reading and signing of the deposition transcript by the deponent is not waived. All objections except as to the form of the question are reserved for the hearing.

A P P E A R A N C E S

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1 doesn't answer the question, so I have to repeat it,
 2 which is why we're here so late, Dr. Sobel.
 3 A. I don't think so.
 4 Q. So let me repeat the question.
 5 Is it your opinion in this case that the EKG
 6 machine used on May 30th, 2011, was an old EKG machine?
 7 A. Now, Counselor, you just repeated the very
 8 same question you just asked me a minute ago, and you've
 9 charged me with keeping us late. Now, that makes no
 10 apparent sense when --
 11 Q. What's your answer?
 12 A. I already said no.
 13 Q. You said, "I wouldn't be surprised."
 14 A. And then you asked me that very same question,
 15 and I said no.
 16 Q. Okay. So it's not your opinion that it was
 17 old?
 18 A. I wouldn't be surprised, but not a degree of
 19 medical certainty.
 20 You asked me two questions. Was it my opinion
 21 to a reasonable degree of medical certainty. I told you
 22 no.
 23 Q. You told me you wouldn't be surprised.
 24 A. No. You asked me the question after I said I
 25 wouldn't be surprised. I told you no.

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04:46:19 1 millimeter or whether the machine was unable to read
 04:46:22 2 them because of motion or various other factors, I don't
 04:46:25 3 know.
 04:46:25 4 Q. And who sets the algorithms?
 04:46:27 5 A. Who loads the algorithms?
 04:46:29 6 Q. Yeah.
 04:46:34 7 A. The manufacturer.
 04:46:37 8 Q. So when those showed up at Macon County
 04:46:40 9 General Hospital, their technicians don't open up the
 04:46:43 10 EKG machine and adjust or tweak the algorithm settings?
 04:46:45 11 A. That is correct.
 04:46:46 12 Q. All right. Do you know if this EKG computer
 04:46:47 13 algorithm had ST depression within its reporting
 04:46:50 14 vocabulary?
 04:46:51 15 A. I'm sure it did, within reasonable medical
 04:46:53 16 certainty if that's helpful.
 04:46:55 17 Q. What are you normally looking for to detect a
 04:46:55 18 lack of good blood flow to the heart on an EKG?
 04:46:58 19 A. A lack of good blood flow to the heart. Wow.
 04:47:01 20 That's not a term of art we use.
 04:47:03 21 Q. And I took that question --
 04:47:05 22 A. A lack of good --
 04:47:06 23 Q. -- just so you know, from a question that
 04:47:08 24 Dr. Ilia was asked in his deposition.
 04:47:09 25 A. Well, a lack of good blood flow to the heart

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1 Q. All right.
 2 A. You asked me the question again, and I said I
 3 wouldn't be -- I said no. No, it isn't my opinion to a
 4 reasonable degree of medical certainty. I don't have
 5 the date of the machine. How could I say?
 6 I wouldn't be surprised. I've worked at these
 7 hospitals. They don't tend to have the most up-to-date
 8 equipment.
 9 Q. But that statement suggests to me that you're
 10 suggesting that this was not an up-to-date piece of
 11 equipment. Is that your testimony in this case?
 12 A. I don't know.
 13 Q. Great. Did this EKG computer have sensitive
 14 algorithms to detect ST depressions, or do you know?
 15 A. I don't know what you mean by "sensitive."
 16 Q. Did it have an algorithm to detect ST
 17 depressions of any degree?
 18 A. No, not of any degree. I don't think so. No.
 19 Q. Okay. What is your basis for that testimony?
 20 A. Well, it missed it.
 21 Q. Okay.
 22 A. There are ST depressions that are quite clear
 23 that are near a millimeter, so you would presume that
 24 the machine was set at greater than a millimeter. Now,
 25 how much greater than a millimeter or equal to a

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04:47:12 1 would generally indicate a shock state. That's
 04:47:12 2 generally not specifically diagnosed
 04:47:14 3 electrocardiographically, but it can be. I think you're
 04:47:18 4 looking at -- for a different question.
 04:47:20 5 Q. I'm repeating a question that was asked by
 04:47:23 6 plaintiff's counsel to Dr. Ilia.
 04:47:25 7 A. I don't know what the question means, a lack
 04:47:27 8 of good blood flow. You'd have to ask me a -- I could
 04:47:29 9 try to answer the question as I did already, or I can
 04:47:33 10 speculate as to what Mr. Kehoe was thinking.
 04:47:35 11 Q. All right. So how would you answer the
 04:47:39 12 question if you were going to try to answer the
 04:47:39 13 question?
 04:47:43 14 A. Well, again, a lack of good blood flow to the
 04:47:49 15 heart would mean a shock state, so you would typically
 04:47:50 16 not diagnose that on an EKG per se.
 04:47:54 17 But I believe he was probably asking about
 04:47:55 18 electrocardiographic signs of ischemia, and that is
 04:47:57 19 broken down into findings that are diagnostic of a
 04:48:00 20 STEMI, findings that are diagnostic of ischemia,
 04:48:01 21 findings that are consistent with ischemia, findings
 04:48:02 22 that are nonspecific, and then a normal EKG. So the EKG
 04:48:05 23 is stratified into those groups, generally speaking.
 04:48:07 24 There may be some overlap between non -- between
 04:48:11 25 nonspecific and consistent with ischemia, and you may

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1 A. They failed.

2 Q. And is that what we talked about, Number 7

3 above?

4 A. Correct.

5 Q. Have we covered that, all of your opinions

6 with regard to that area?

7 A. Yes.

8 Q. Would you agree that in medicine there are

9 legitimate differences of opinion about the standard of

10 care?

11 A. In general, the standard of care is a

12 consensus, so not routinely so. I mean, you --

13 certainly in a tort situation you find experts that have

14 diametrically opposed opinions. But in my opinion, the

15 defense experts in this case can be easily refuted.

16 Q. Well, in general, are you telling me that

17 there are -- there are no legitimate differences of

18 opinion about the standard of care in a case?

19 A. Not routinely. The standard of care is

20 generally a consensus --

21 Q. Okay.

22 A. -- based on literature, based on experience,

23 based on local factors, so -- but whether or not experts

24 disagree, that's a different question.

25 Q. Isn't it true that there may be more than one

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05:53:10 1 already. But we could review it if you like, but don't

05:53:10 2 blame me for being -- prolonging the deposition.

05:53:15 3 Q. Do you have an opinion with regard to the EKG

05:53:15 4 program?

05:53:16 5 A. All of the ones I've previously given.

05:53:18 6 Q. That it was inadequate?

05:53:20 7 A. Well, yes. It was inadequate to diagnose the

05:53:34 8 electrocardiographic repolarization abnormalities that

05:53:36 9 were consistent with ischemia, yes.

05:53:38 10 MR. KEHOE: You know she's taking up all your

05:53:41 11 time. We're going into all of these new opinions now.

05:53:44 12 Is that -- is that what we're doing?

05:53:50 13 Q. (By Ms. Brown) Did you review Dr. Jones's

05:53:56 14 report?

05:54:07 15 A. I did.

05:54:11 16 Q. Okay. Do you disagree with any of his

05:54:13 17 opinions with respect to the hospital and the nursing

05:54:16 18 staff?

05:54:21 19 A. His report gave me a lot of pause. I would

05:54:23 20 have to pull it out to get more specific. I could say

05:54:25 21 by and large I almost uniformly agreed with each and

05:54:25 22 every one of his conclusions except perhaps --

05:54:28 23 Q. You agreed?

05:54:33 24 A. Disagreed with his conclusions except perhaps

05:54:37 25 some of the things that he mentioned with respect to the

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1 acceptable way to treat a patient medically?

2 A. Oh, sure. That's a different situation and a

3 different question.

4 Q. And would you agree with me that nurses and

5 hospital personnel have to use their own medical

6 judgment in determining the appropriate care for a

7 patient?

8 A. Of course they use medical judgment. It's one

9 of the variables. Obviously, it's just one of the

10 factors.

11 Q. Do you have an opinion as to whether the

12 triage portion of her care was properly done?

13 A. Yes.

14 Q. Okay. And what's your opinion?

15 A. She obviously should have been put on a chest

16 pain pathway, and her acuity level was a two rather than

17 a three.

18 Q. You testified the other day about the EKG

19 program, and you're not offering any opinions with

20 regard to the EKG -- EKG program --

21 A. Any new opinions?

22 Q. -- are you?

23 Well, as to whether it was adequate or

24 inadequate?

25 A. I want to say that we discussed that in detail

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05:54:40 1 prehospital care.

05:54:43 2 Q. Well, would you mind pulling out Dr. Jones's

05:54:45 3 report and tell me what you agree with? Would that be

05:54:46 4 quicker?

05:54:48 5 A. I don't know. It's probably not going to be

05:54:51 6 quick either way. Okay. It's a fairly lengthy report.

05:54:53 7 Okay. Well, to try to answer your question,

05:54:54 8 I'd probably start from the back because I think that's

05:54:57 9 where he talked about the prehospital care.

05:55:00 10 THE WITNESS: I think we lost the air

05:55:04 11 conditioning for a while again. Okay. The lights will

05:55:06 12 be going out soon.

05:55:12 13 A. All right. "There is conflicting testimony

05:55:13 14 between the family members and documentation by the fire

05:55:17 15 department," et cetera. "Family members state that they

05:55:19 16 administered resuscitative measures. The EMT crew

05:55:27 17 provided no resuscitative measures or that they did so

05:55:35 18 inadequately and failed to document accurately."

05:55:44 19 Q. (By Ms. Brown) Which page are you on?

05:55:48 20 A. I -- this is nine.

05:55:53 21 That is a fair, factual summary of the

05:55:54 22 conflicting testimony and the issue regarding the

05:55:57 23 failure of the EMT crew to apparently provide

05:55:59 24 resuscitative measures on a timely basis. I do agree

05:56:00 25 with that.

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05:58:51

05:58:56

05:59:01

05:59:07

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1 contained excerpts."

2 THE COURT REPORTER: I'm sorry?

3 THE WITNESS: I'm sorry. I'm trying to go

4 fast.

5 "ER charts customarily and appropriately

6 contain excerpts from heart monitor strips." I agree.

7 "Rather than the entirety of the strip." I agree.

8 "Primarily because of record volume concerns." I agree.

9 "Heart monitor machines are generally

10 calibrated to print out any significant detected

11 abnormality." I agree.

12 (As read:) "The excerpts appearing in

13 Mrs. Cherry's chart are typical and depict no rhythm

14 abnormalities." Wow. Either he's looking at somebody

15 else's record, or he's got heart rhythm strips that

16 nobody else has. That's hard to fathom there. I don't

17 know what he's looking at. He says there are excerpts.

18 There are no excerpts. Correct me if I'm wrong.

19 Okay. (As read:) "I disagree with any

20 complaint that computerized reading of the EKG as

21 'abnormal' was conclusive, diagnostic, or indicative of

22 an acute coronary syndrome." Some of these things I

23 actually agree with. This is an EKG which is consistent

24 with ischemia, which is of concern for ischemia, but is

25 not frankly diagnostic of ischemia. In other words,

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06:17:19 1 things that the doctor doesn't see and vice versa.

06:17:22 2 Okay. (As read:) "Computer EKG makes no

06:17:22 3 reference to any ST depressions." That is true. I

06:17:24 4 agree.

06:17:25 5 (As read:) "It is not within the acceptable

06:17:28 6 professional standard of care for ER physicians to

06:17:32 7 accept automated interpretations as definitive or

06:17:34 8 accurate." It depends what part of the automated

06:17:39 9 interpretations. eAccess is very good [phonetic].

06:17:40 10 It's better than a human. The voltage measurements, the

06:17:44 11 interval measurements typically are very good, and

06:17:47 12 they're typically better than the human eye. But when

06:17:50 13 it comes to -- unless you use a magnifying glass,

06:17:54 14 perhaps. But when it comes to repolarization

06:17:59 15 abnormalities, EKG computer algorithms are not

06:18:05 16 necessarily accurate. I do agree with that.

06:18:09 17 Q. In the paragraph above that --

06:18:12 18 THE WITNESS: Any chance of turning the air

06:18:16 19 conditioner back on?

06:18:26 20 Q. (By Ms. Brown) The paragraph above that,

06:18:29 21 we've talked about the role of the nursing staff in --

06:18:34 22 THE WITNESS: Thank you.

06:18:37 23 Q. (By Ms. Brown) -- in interpreting the EKGs.

06:18:41 24 And do you want to look through this real

06:18:46 25 quickly, Doctor, and tell me if there's anything else

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1 there are -- to me, it's a 1-millimeter deflection of

2 the ST which raises a lot of concerns. It's not .5, but

3 then again, it's not 6 millimeters. This is not an EKG

4 that is frankly and absolutely diagnostic of ischemia,

5 but this is an EKG that certainly raises concern and may

6 be consistent with ischemia. I think he's missing the

7 point.

8 Let's see. It certainly was abnormal. There

9 was no question of that. So I disagree.

10 (As read:) "Computerized EKGs are subject to a

11 proprietary algorithm." I agree were that.

12 "The GE Mac 1200," I don't have any reason to

13 disagree with that. I don't know what year it was.

14 "EKG's automated interpretation is typically

15 dependent on the manufacturer's choice of algorithm."

16 That's part of it. Also motion is another part of it,

17 also voltage is another part of it, and she had

18 relatively low voltage.

19 (As read:) "The automated interpretation does

20 not represent the recognized standard of acceptable

21 practice." I agree that the -- simply the fact that the

22 machine has detected an abnormality doesn't mean it's

23 absolutely correct. The physician needs to review that

24 and read the EKG appropriately. Sometimes the machine

25 is right. Sometimes it's wrong. Sometimes it sees

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06:18:52 1 that you agree with? That might be a little bit

06:18:58 2 quicker.

06:19:07 3 A. I don't know how else to do it except read it

06:19:11 4 as fast as I can and tell you. That's what I've been

06:19:14 5 doing. I don't know how else to do it. If you have

06:19:18 6 another way, let me know.

06:19:22 7 Q. Well, if you read it and tell us when you find

06:19:24 8 a statement that you agree with?

06:19:31 9 A. Oh, okay. You want me to just do it silently

06:19:34 10 the way I -- instead of reading it out loud?

06:19:38 11 Q. Yeah. That might go a little bit faster.

06:19:44 12 A. All right. I doubt it, but okay.

06:19:48 13 (As read:) "A completely normal EKG would be

06:19:53 14 the exception to the rule for most 58-year-old

06:19:57 15 patients." I don't terribly disagree with that. I'm

06:20:01 16 not quite sure what he means by "exception rather than

06:20:04 17 the rule," but yes, 58 years old, you -- and other ages

06:20:08 18 you may see one abnormality or another. I don't

06:20:11 19 disagree with that.

06:20:14 20 "There are no acute findings," well -- I'm

06:20:19 21 reading to myself.

06:20:23 22 Serial EKGs were required.

06:20:28 23 "I disagree with the contention that an EKG

06:20:31 24 can rule out ischemia." I agree with that.

06:20:36 25 "An EKG can only rule in ischemia, but not